

LEGAL TOOLS FOR THE PROTECTION OF RIVER CORRIDORS

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Abstract. The protection of river corridors serves a dual purpose, the preservation of open space and the protection of water quality. There are a number of legal tools that Georgia communities may use to protect the quality of life by insuring clean water. These include local and state legislation, land acquisition of land through purchase or donation, and the use of conservation easements. However, choosing the most appropriate tool to use depends upon the community's resources.

INTRODUCTION

The Clean Water Act does not afford adequate protection from non-point source agricultural pollution. However, an increasing number of user groups, conservation organizations, and local governments are becoming aware of the importance of protecting river corridors. The state of Georgia currently has 34 land trusts which serve as holding organizations for development rights to environmentally sensitive lands throughout the state. A few local governments are using ordinances to protect river corridors from environmentally damaging uses, but many are still unaware of both the need and the tools. As grass roots organizations and planners work to increase this awareness, they must educate the communities regarding the legal options that are available to them. By educating local governmental officials and citizens about these options and the best ways to use them, the rivers of Georgia will become cleaner.

BACKGROUND

The Clean Water Act addresses and regulates discharges of pollutants into water. However, for non-point source pollution, the most effective controls stem from local planning. Non-point source pollution may come from development, new highways, agriculture and any other type of water pollution that is not a direct discharge. Many local communities are without the scientific or legal knowledge to know what options are available to them to help control non-point source pollution.

Several legal tools may be used for land protection. The first method is condemnation by the government. Local, state, and federal governments can take land along the river as long as they provide adequate compensation to the owner of the

land. The second method is zoning. The government may zone the land to restrict development and agricultural uses near the river. The third method is by acquisition, either by government or a conservation organization. The land is purchased to create a buffer zone. The fourth method available in the state of Georgia is conservation easements. Here, the owner of the property agrees to certain uses of the land in perpetuity in order to protect a natural resource.

ALTERNATIVES FOR LAND PROTECTION

Condemnation. The government has the power of eminent domain, which allows it to take land for public use so long as it provides adequate compensation (fair market value) to the owner of the land. The state of Georgia's Urban Renewal statute allows cities to take land in downtown areas to revive the economic prosperity of the city. The protection of river corridors within cities provide open space that enhances the quality of life and economic vitality.

Zoning. Local governments may use zoning to provide a buffer zone for river corridors. This requires local legislation which limits the uses of property within a certain area near the river. Madison County, for example, decided to restrict development within 25 feet of the Broad River, by creating a river overlay zoning district. Development within this buffer is only allowed subject to the issuance of a permit from the county commission. The rationale for this restriction might be to control erosion and sedimentation but the restriction would also serve to provide a scenic corridor along the river. A county may decide to place even more restrictions on development near their rivers. For example, live stock and poultry farms may be restricted altogether, within 100 feet of the river. This might be enacted to prevent fecal contamination in the river.

Zoning requires that the land retain value; otherwise, a zoning law could constitute a "taking" on behalf of the government. Thus, counties should be aware of how much value remains after the restriction and whether the owners will still be able to use and enjoy their land.

Acquisition. The government or a conservation organization may decide to protect rivers by land acquisition. By soliciting the donation of land or by purchasing the land, either entity may place restrictions for development upon the

land. Tax incentives for the donation of land are one way to encourage this gift. Any entity that wishes to acquire land through purchase will need to consider developing criteria to ensure that they are acquiring the most sensitive areas first.

Conservation Easement. A property owner may decide to give up some development rights to his property in order to protect the river corridor. For example, a property owner may require that any agriculture uses take place outside a 100 foot buffer from the river. The property owner would give up this development right through a conservation easement to be held either by a land trust or the government. The property owner may also receive tax benefits for this contribution. However, conservation easements may also be purchased by a land trust or a government.

COSTS OF ALTERNATIVES

These tools will work best when the stakeholders are defined and the resources of each group are brought together. One of the most important reasons to choose a particular tool is funding. While land acquisition may be the easiest way in which to protect the land from development, it can be costly. Thus, it is important to review the river corridor and define the sensitive areas before making a purchase.

Governments may fund land acquisition through bond issues, user fees, and tax return check-offs. Bond issues allow the government to borrow money and repay with interest within specified time period. This situation enables the government to raise a large amount of money in a short period of time. User fees tax the individuals making use of the natural resource. For example, a gasoline tax could help maintain a scenic parkway in the Appalachian Mountains. Lastly, tax return check-offs allow taxpayers to check off on their state tax form the dedication of a small portion of their taxes to conservation.

A conservation organization may fund land acquisition through the purchase of a conservation easement, bargain sale, and purchase. The purchase of a conservation easement is an inexpensive method to acquire land. A bargain sale is when a land owner sells the land at less than fair market value to a conservation entity. The seller may receive tax advantages if the land is donated to a non-profit. Purchase of land entails obtaining the land at the fair market value. By purchasing the land outright, it is easily obtained and managed.

Conservation easements which are received as a donation are even less costly to maintain. Usually, at the time of donation, the grantor of the easement makes a gift into a stewardship fund. This stewardship fund provides resources for monitoring and enforcement (including litigation if necessary). The process of placing land under a conservation easement includes educating the landowner, determining the value of the easement, drafting the deed of easement, finding a land trust or government to accept the easement, and using the tax benefits is time consuming. This requires a lot of work on

the part of the land trust or government. Despite the amount of work involved, it remains an excellent avenue for cash poor organizations to protect land.

Local governments may choose to adopt ordinances which protect river corridors. This method of protection is under utilized in Georgia. Zoning protection could be increased through educating the constituents living in the watershed. It is through public support that ordinances are adopted, thus education is vital in this form of protection. Conservation organizations may work with local governments and planners to adopt zoning restrictions which benefit the river corridor without depriving individuals of their property rights.

Condemnation is a seldom used method by the government to protect river corridors. Condemnation is much like acquisition in that there must be funds available for the purchase of the land. It could be used where there is a need to protect the river and there is an unwilling landowner. It requires that the government pay for the fair market value of the land.

CONCLUSION

The most important concern is that local communities are aware of all the options that are available to them to protect their water quality. The communities also need to be educated about the combination of alternatives so that resources for water protection are utilized in the best manner.

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LITERATURE CITED

- Fowler, Laurie, 1995. Conservation easements for natural resource protection. Georgia Environmental Policy Institute Resource Paper 1.
- Marx, Stacey S., 1992. Preserving open space: A guide for New England. U.S. Department of the Interior, National Park Service.